IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Sanwatya V/S Mst. Soni and another

S.B. Civil First Appeal No. 183/90 against the judgment and decree dated 30.8.1990 passed by Shri Nanag Ram Sharma, Addl. District Judge, Gangapur City in Civil Suit No. 54/1987.

Date of Judgment ::: August 10, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. Rinesh Gupta for the appellant
Mr. Vikram Singh for the respondents

BY THE COURT;

This appeal under Section 96 CPC arises out of the judgment and decree dated 30.8.1990 passed by the learned Additional District Judge, Gangapur City, whereby the learned Judge has dismissed the plaintiff's suit.

The plaintiff, showing himself to be the adopted son of Meva, filed a suit with the prayer that the sale deed dated 15.3.1982 executed by Meva during his life time in favour of defendants, in respect of the land

described in para 1 of the plaint, may be declared null and void, illegal and ineffective. It was further prayed that by issuing permanent injunction the defendants be restrained from interfering with the possession of the plaintiff and also from transferring the land in dispute in any manner. The learned trial court, on consideration of evidence and material on record, dismissed the plaintiff's suit on the ground that plaintiff has not been able to prove that he was adopted by Meva and after adoption Meva executed a deed to this effect. Since adoption of plaintiff could not be proved, the trial court held that he was not entitled to 1/3rd share in the property of Meva.

Mr. Gupta appearing for the appellant has, inter-alia, contended that the trial court has committed serious error in disbelieving the evidence adduced on behalf of the plaintiff merely on the ground of minor discrepancies as to the date of adoption of plaintiff. According to the learned counsel such discrepancies are bound to occur inasmuch as the statements of witnesses were recorded after long lapse of time from the date of adoption. The witnesses are illiterate and rustic villagers and therefore, it cannot be expected of them

that they would remember the exact date of adoption and that too, after along lapse of time. Mr. Gupta further argued that trial court has disbelieved the execution of adoption deed on superficial grounds.

Per contra, learned counsel for the respondents has supported the judgment impugned in this appeal.

I have considered the rival submissions and gone through the evidence and material on record. One of the strong reasons that prevailed with the trial court in dismissing the plaintiff's suit was that on the date of adoption, undisputedly the age of the plaintiff was 30-35 years and in view of the provisions of Hindu Adoption and Maintenance Act, 1956 (For short, “the Act”) he was not legally entitled to be adopted. Section 10 of the Act provides as under:

> “10. Person who may be adopted.- No person shall be capable of being taken in adoption unless the following condition are fulfilled, namely:-
>
> (i) he or she is a Hindu;
>
> (ii) he or she has not already been adopted;
>
> (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption".

A perusal of the above provisions makes it clear that no person who is married and/or has completed the age of fifteen years would be capable of being taken in adoption unless there is a custom or usage applicable to the parties in this respect. There cannot be any dispute that at the time of alleged adoption, plaintiff was a married man having 2-3 daughters and his age was 30-35 years. It has not been pleaded in the plaint that there was a custom in his society to the extent that a person above the age of 15 years or a married can be taken in adoption. The plaintiff has not been able to prove by adducing evidence that such customs and usages were prevailent in their society. Therefore, it can well be said that in view of the provisions of Sec. 10 of the Act the plaintiff was not a person capable of being taken in adoption. That apart, the plaintiff could not prove that his parents had in fact given him in adoption of Meva as required

by the provisions of Section 11 of the Act. For being a legal adoption, it is all the more necessary that the consent of wife of the person who intends to take any person in adoption is necessary. In the instant case, DW2 Smt. Beela w/o of late Meva has denied the fact of adoption of plaintiff by her husband.

So far as averment of the plaintiff that defendant has got the sale deed executed fraudulently as Meva, at the relevant time, was not a man of sound mind is concerned, suffice it to observe that PW3 Kajodia examined on behalf of plaintiff himself has stated in specific terms that mental condition of Meva was sound. That apart, the witnesses have not supported the plaintiff's case, inasmuch as there is huge inconsistency in the statements of plaintiff's witnesses as regards date and time of adoption. The trial court has taken into consideration every aspect of the matter in true perspective and has rightly come to the conclusion that the plaintiff has not been able to prove adoption. For the reasons therefore, the impugned judgment and decree call for no interference.

Consequently, this appeal being devoid of merit is

liable to be dismissed and is dismissed accordingly, with no order as to costs.

(Khem Chand Sharma), J.

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